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Before the
COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re **DISTRIBUTION OF CABLE ROYALTY FUNDS**	**CONSOLIDATED PROCEEDING NO. 14-CRB-0010-CD (2010–13)**

PUBLIC TELEVISION CLAIMANTS' BRIEF ADDRESSING RATIONALE AND CALCULATION OF BASIC FUND ADJUSTMENT IN ACCORDANCE WITH THE JUDGES' JUNE 29, 2018 ORDER

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The Public Television Claimants ("PTV") submit this brief in response to the Judges' June 29, 2018 Order seeking memoranda of law and affidavits addressing "[w]hether the interrelationship between and among the Basic Fund, the 3.75% Fund, and the Syndex Fund affects the allocations within the Basic Fund, if at all, and, if so, how that affect should be calculated and quantified."

I. Introduction

The purpose of this proceeding is to allocate the royalties collected under the cable compulsory license to copyright owners of six different categories of programming based on the relative marketplace value of those program categories. Cable system operators ("CSOs") paid those royalties at three different rates, the Basic Rate, the 3.75% Rate, and the Syndex Rate, and the Copyright Office held those royalties in three corresponding funds, the Basic Fund, the 3.75% Fund, and the Syndex Fund (collectively, the "Combined Royalty Funds").

The parties here have sought to establish the relative marketplace value of the six programming categories using, essentially, three types of global evidentiary studies (*i.e.*, studies addressing all parties' shares): econometric analyses, attitudinal surveys, and viewing analyses. Each type of evidence presented is a measurement of the Combined Royalty Funds—in other words, the studies measure value based on the *total* amount of royalties paid to the Copyright Office, regardless of whether those royalties were generated at the Basic, 3.75%, or Syndex Rates. Although this focus on the Combined Royalty Funds may facilitate the estimation of relative marketplace value, it creates a complication when allocating shares because not all parties are entitled to recover from the 3.75% and Syndex Funds.

As a result, and as established by the record in this proceeding, the Judges must therefore convert the studies' estimated shares based on the Combined Royalty Funds to shares tailored to the particular funds from which the parties are entitled to recover (the "Evidentiary

Adjustment"). Without the Evidentiary Adjustment, most parties would recover only a portion of the full relative marketplace values actually estimated by the experts in this proceeding. Indeed, the evidence in the record exclusively supports the logic of, and need for, the Evidentiary Adjustment.

The Evidentiary Adjustment is also established precedent, with both the Judges and their predecessor Copyright Arbitration Royalty Panel ("CARP") having confirmed and applied the Evidentiary Adjustment in recent allocation proceedings where the methodology adopted measured relative marketplace value without reference to the individual funds.

Accordingly, because the record establishes the need for the Evidentiary Adjustment, and because the parties have presented no legal or factual basis to depart from precedent, the Judges should apply the Evidentiary Adjustment as described in the record by PTV witnesses Linda McLaughlin and David Blackburn and in Ms. McLaughlin's affidavit accompanying this brief ("McLaughlin Affidavit").

II. Background

The issues raised by the Judges call for a brief discussion of the legal and regulatory authority regarding the different royalty rates at issue in this proceeding, the history of the Evidentiary Adjustment, and the manner in which the Evidentiary Adjustment has been addressed over the course of this proceeding.

A. The Royalty Rates

Three different royalty rates apply under the Section 111 statutory license for distantly retransmitted broadcast programming: the Basic Rate, the 3.75% Rate, and the Syndex Rate.[1]

[1] *Distribution of the 2000-2003 Cable Royalty Funds*, *Docket No. 2008-2 CRB CD 2000-2003*, 75 Fed. Reg. 26798, 26798-99 (May 12, 2010) (*2000-03 Determination*).

The application of a particular rate to a distantly retransmitted signal depends on how that signal would have been treated under the now-defunct distant signal carriage rules ("Former FCC Rules") of the Federal Communications Commission ("FCC").[2] The Former FCC Rules previously (1) restricted the number of commercial distant signals that cable systems could carry and (2) required cable systems to black-out programming contained on a distant signal where the local broadcaster had purchased the exclusive right to that programming.[3] When the FCC repealed the Former FCC Rules in 1980, the Copyright Royalty Tribunal ("CRT") crafted the 3.75% Rate and the Syndex Rate to ensure that copyright owners would be compensated for royalties lost as a result of the repeal.[4]

The Basic Rate applies to the retransmission of distant signals by small- and medium-sized cable systems, as well as to the retransmission of distant signals by large cable systems that would have been permitted under the Former FCC Rules.[5] Small- and medium-sized cable systems pay a flat fee, while large cable systems pay royalties based on a sliding scale of percentages of their gross receipts depending on the number of distant signal equivalents ("DSEs") that they incur or, if they carry less than one DSE, a minimum fee equal to the royalty payment for one DSE.[6] The Copyright Office collects payments under this rate into the Basic Fund.[7]

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[2] *Id.* at 26798.

[3] *Id.*

[4] *Id.* at 26798-99.

[5] *Id.* at 26798.

[6] *Id.* at 26800 n.6.

[7] *Id.* at 26798.

The 3.75% Rate—sometimes called the Penalty Rate—applies to the retransmission of additional distant signals beyond the limited number that cable systems could carry under the Former FCC Rules.[8] The 3.75% Rate does not apply to all signals because some signals, such as non-commercial, educational signals, could have been carried on an unlimited basis under the Former FCC Rules.[9] Where, however, the 3.75% Rate does apply to one or more distant signals carried by a CSO, the Section 111 statutory license structure makes it impossible—or at least arbitrary—to determine exactly which eligible signals were paid for at the 3.75% Rate.[10] The Copyright Office collects payments under this rate into the 3.75% Fund.[11]

The Syndex Rate applies to the retransmission of distant signals that contain programming that would have been subject to black-out protection under the Former FCC Rules.[12] Only the Program Suppliers[13] collect fees paid at the Syndex Rate, and those fees have become increasingly minimal over time.[14] The Copyright Office collects payments under this rate into the Syndex Fund.[15]

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[8] *Id.* at 26799.

[9] *See 1983 Cable Royalty Distribution Proceeding, Docket No. CRT 84-1 83CD*, 51 Fed. Reg. 12792, 12813 (April 15, 1986) (*1983 Determination*).

[10] *Distribution of the 2004 and 2005 Cable Royalty Funds, Docket No. 2007-3 CRB CD 2004-2005*, 75 Fed. Reg. 57063, 57071-72 (September 17, 2010) (*2004-05 Determination*).

[11] *2000-03 Determination*, 75 Fed. Reg. at 26799.

[12] *Id.*

[13] The Music Claimants also collect fees paid at the Syndex Rate, but the Music Claimants' shares in this proceeding have been set by settlement agreement. *Joint Notice of Settlement and Motion for Distribution Regarding Cable Royalty Claims of Music Claimants*, Docket No. 14-CRB-001-CD, at 1-2 (December 15, 2016).

[14] *See 2004-05 Determination*, 75 Fed. Reg. at 57079; *Distribution of the 1990, 1991 and 1992 Cable Royalties, Docket No. 94-3 CARP CD-90-92*, 61 Fed. Reg. 55653, 55654 n.2 (October 28, 1996) (*1990-92 Librarian Order*).

[15] *2000-03 Determination*, 75 Fed. Reg. at 26799.

B. History of the Evidentiary Adjustment

Although the Judges' predecessors did not always recognize the need for the Evidentiary Adjustment, it is now established precedent.

The CRT first ruled in the 1983 allocation proceeding that PTV was not entitled to an allocation from the 3.75% Fund.[16] In the 1989 proceeding, PTV requested the Evidentiary Adjustment,[17] but the CRT rejected it on the sole basis that "Mr. Bortz stated there was nothing in his survey to suggest that respondents were considering their 1989 copyright payment as the fixed budget they were allocating. Therefore, the very premise of this proposed adjustment was unproved."[18]

The 1990-92 CARP similarly rejected PTV's proposed adjustment, noting only that "PTV's proposed further adjustment to allow for its non-participation in the 3.75 fund is rejected for the same reason given by the Tribunal in the 1989 proceeding."[19] On review, however, the Librarian observed that PTV's proposed adjustment "might have some validity," particularly with respect to its share as measured by the Bortz survey.[20] The Librarian nevertheless concluded that the CARP had not acted arbitrarily in denying the Evidentiary Adjustment because it had fashioned PTV's share using multiple methodologies and adjustments instead of relying solely on the results of the Bortz survey.[21]

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[16] *See 1983 Determination*, 51 Fed. Reg. at 12813.

[17] *See 1989 Cable Royalty Distribution Proceeding, Docket No. CRT 91-2-89CD*, 57 Fed. Reg. 15286, 15300 (April 27, 1992).

[18] *See id.*

[19] *Copyright Arbitration Royalty Panel Cable Royalties for the Years 1990-92, Docket No. 94-3 CARP CD-90-92* at 124 (May 31, 1996).

[20] *1990-92 Librarian Order*, 61 Fed. Reg. at 55668.

[21] *Id.* at 55667-68.

It was in the 1998-99 allocation proceeding that the CARP reversed course, concluding that "PTV's Bortz share should be adjusted upward to account for PTV's non-participation in the 3.75% or Syndex funds."[22] The Panel explained that, although it might not apply to *all* methodologies,[23] the Evidentiary Adjustment was necessary when relying on the Bortz survey because the Bortz survey had asked survey respondents to craft their value measure—*i.e.*, allocate a fixed budget—generally and without accounting for PTV's non-participation in the 3.75% Fund.[24] "[T]he 1989 CRT and 1990-92 CARP did not fully appreciate the logic supporting this adjustment."[25] Indeed, it was "precisely because the Bortz respondents did not answer based on their actual royalty payments and presumably did not know that PTV would not be eligible to receive part of their budget allocation that the adjustment is warranted."[26]

On review, the Librarian did not discuss the rationale for the adjustment, but found no issue with the 1998-99 Panel's method for calculating PTV's award and observed that, even after applying the Evidentiary Adjustment, "PTV did not receive a percentage of the 3.75% Fund or the Syndex Fund."[27]

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[22] *Report of the Copyright Arbitration Royalty Panel to the Librarian of Congress, Docket No. 2001-8 CARP CD 98-99* at 26 n.10 (October 21, 2003) (*1998-99 Determination*).

[23] The Panel declined to apply an adjustment to Dr. Rosston's regression analysis. *See id.* at 25-26, 26 n.10, 48 n.21, 59 n.29. Although Dr. Rosston confirmed that an adjustment to his regression would be necessary to set PTV's share, *id.* at 48 n.21, the Panel had already determined that the Bortz survey should be the basis for setting PTV's share and that, because of evidentiary shortcomings, Dr. Rosston's regression would be used for confirmation and corroboration of the unadjusted Bortz results rather than as an independent measure of relative marketplace value, *id.* at 25-26, 50.

[24] *Id.* at 26 n.10.

[25] *Id.*

[26] *Id.*

[27] *See Distribution of the 1998 and 1999 Cable Royalty Funds*, *Docket No. 2001-8 CARP CD 98-99*, 69 Fed. Reg. 3606, 3609, 3609 n.15 (January 26, 2004) (*1998-99 Librarian Order*).

The Judges in the 2004-05 allocation proceeding,[28] apparently relying on the precedent set by the 1998-99 CARP, applied the Evidentiary Adjustment without discussion, noting only that the calculation of the augmented Bortz results by Linda McLaughlin "includes appropriate adjustments to the PTV share at SP PFF at ¶ 317."[29] The particular proposed finding of fact referenced by the Judges and endorsed by the Commercial Television Claimants, Joint Sports Claimants, Music Claimants, and PTV consisted of the following:

> Both the unadjusted and augmented Bortz survey results show the percentage value of all royalties – Basic, 3.75 and Syndex – paid by the surveyed cable systems that the respondents assign to each programming type. Because PTV receives payments from only the Basic fund, an adjustment to the augmented survey results is needed to produce PTV's share of the Basic fund, as recognized by the CARP in the 1998-99 Proceeding. This adjustment divides the augmented PTV results by the percent of Form 3 royalties in the Basic fund: 85.0 percent in 2004 and 85.9 percent in 2005.[30]

C. The Parties' Treatment of the Evidentiary Adjustment in This Proceeding

Throughout the course of the current proceeding, no party challenged the need for, or application of, the Evidentiary Adjustment.

PTV first raised the Evidentiary Adjustment in the written direct testimony of Linda McLaughlin and David Blackburn on April 17, 2017.[31] As they explained,

> The surveys and econometric estimates of value to CSOs determine shares of the *Combined Royalty Funds* for each of the programming claimants. . . . As a result, in order for PTV to receive the share of total value to CSOs estimated by the other experts, it must receive a larger share of the Basic Fund, since it will receive no share from the other funds.[32]

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[28] The issue was not addressed in the 2000-03 allocation proceeding because PTV's share was determined by a settlement agreement. *See 2000-03 Determination*, 75 Fed. Reg. at 26799-800.

[29] *2004-05 Determination*, 75 Fed. Reg. at 57070.

[30] *Proposed Findings of Fact and Conclusions of Law of the Settling Parties, Docket No. 2007-3 CRB CD 2004-2005* at 130 ¶ 317 (March 24, 2010).

[31] *See* Ex. 3012 at 24-25 (McLaughlin & Blackburn).

[32] *Id.* (emphasis added).

The need for the Evidentiary Adjustment was also confirmed in the written direct testimony of Mr. Trautman, who applied the Evidentiary Adjustment in the same way as the 2004-05 Judges.[33]

PTV again raised the Evidentiary Adjustment during the hearing in opening statements[34] and in the oral testimony of Ms. McLaughlin.[35] Ms. McLaughlin explained that, although PTV recovers only from the Basic Fund, "*all* of these studies look at, as a percent of all royalties from all funds, how they would divide the relative value," so it is necessary to adjust PTV's share of the Basic Fund using the method employed by the 2004-05 Judges.[36] No party cross-examined Ms. McLaughlin on the rationale for applying the Evidentiary Adjustment,[37] and the only other witness to address the issue, Mr. Trautman, confirmed his own application of the adjustment "to reflect the fact that PTV does not share in the 3.75 Fund."[38]

Finally, PTV reasserted the need for the Evidentiary Adjustment in closing argument[39] and in its Proposed Findings of Fact and Conclusions of Law.[40] No party proposed a contrary finding or conclusion that cited any evidence or legal authority.[41]

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[33] Ex. 1002 at 38-39, Tbl 10., Appx.. A at A-2 (Trautman).

[34] Tr. 128:12-16 (Dove).

[35] *See* Tr. 2476:21-2478:4 (McLaughlin).

[36] *Id.* at 2477:2-2478:4 (emphasis added).

[37] *See generally* Tr. 2488:10-2658:2 (McLaughlin).

[38] Tr. 633:8-14 (Trautman).

[39] Tr. 4469:8-11 (Dove).

[40] *See* PTV PFF ¶¶ 43, 191, 196, 198, 200, 202; PTV PCL ¶ 30.

[41] *See, e.g.*, JSC PCL ¶¶ 17, 29, 30 (confirming application of McLaughlin's proposed adjustments as consistent with 2004-05 and 1998-99 Determinations); CTV PFF ¶¶ 124, 239 (acknowledging application of Evidentiary Adjustment); CCG PFF ¶ 274 (summarizing relative

It was only after the hearing was complete and PTV had no further opportunity to respond that Program Suppliers summarily asserted in a response to PTV's Proposed Conclusions of Law that "it would not be appropriate" for the Judges to apply the Evidentiary Adjustment.[42] Program Suppliers declined, however, to offer any explanation in their two-sentence response for why it would be inappropriate for the Judges to apply the same Evidentiary Adjustment used in the 1998-99 and 2004-05 allocations.[43] By contrast, the responses of the other parties continued to confirm that the Evidentiary Adjustment should be applied.[44] JSC, for example, confirmed that "the 2004-05 Phase I Order accepted McLaughlin's adjustment, and Trautman has endorsed a similar adjustment in this proceeding."[45] Similarly, CTV confirmed that "[d]ue to PTV's lack of participation in the 3.75% Fund, PTV's share of the Basic Fund is adjusted upwards and the other shares downwards."[46]

III. Legal Standard

The Judges "shall act in accordance with . . . prior determinations and interpretations of the . . . copyright arbitration royalty panels . . . and the Copyright Royalty Judges."[47] The Judges must adhere to precedent unless they determine that, "*on the record before [them]*, prior conclusions should be modified."[48] In such circumstances, the Judges must provide "a reasoned

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marketplace value measures without differentiating between funds); PS PFF ¶ 355 (advocating a "*total* royalty allocation") (emphasis added).

[42] *See* PS RPCL at ¶ 12.

[43] *See id.*

[44] *See, e.g.*, JSC RPFF ¶ 34; CTV RPFF ¶¶ 32(e).

[45] JSC RPFF ¶ 34(c).

[46] CTV RPFF 32(e).

[47] 17 U.S.C. § 803(a)(1).

[48] *1998-99 Determination* at 14 (emphasis in original).

explanation of [their] decision to vary from precedent" and identify the "evidence tending to show that past conclusions were incorrect."[49]

IV. Argument

The Evidentiary Adjustment is firmly supported by both precedent and the record in this proceeding. Accordingly, the Judges should apply the Evidentiary Adjustment to ensure that the parties are awarded the relative marketplace values actually measured[50] by the methodology that the Judges choose to adopt. Specifically, the Judges should take the parties' relative marketplace values—as measured based on the Combined Royalty Funds—and convert them to equivalent shares of the particular funds from which the parties are entitled to recover.

A. Precedent Supports the Application of the Evidentiary Adjustment.

Both the Judges and their predecessor CARP applied the Evidentiary Adjustment in the last two allocation proceedings to consider the issue, explicitly departing from prior rejections of the Evidentiary Adjustment upon closer review and after reasoned explanation.

The 1998-99 CARP first applied the Evidentiary Adjustment to ensure that PTV was awarded a share of the Basic Fund equal to its relative marketplace value as measured by the Bortz survey. This was necessary because the Bortz survey crafted its measure of relative marketplace value—*i.e.*, asked CSOs to allocate a fixed budget to different programming types—without differentiating between the Basic, 3.75%, and Syndex Rates—*i.e.*, without asking separately about programming paid for the different rates. As the responding CSOs were

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[49] *1998-99 Librarian Order*, 69 Fed. Reg. at 3514; *Nat'l Ass'n of Broadcasters v. Copyright Royalty Tribunal*, 772 F.2d 922, 932 (D.C. Cir. 1985).

[50] It bears noting that the parties' experts *could have* presented global studies tailored to each of the Basic, 3.75%, and Syndex Funds, thus obviating the need for the Evidentiary Adjustment. Here, however, the global studies presented by the parties focused exclusively on overall relative marketplace value tied to the Combined Royalty Funds.

unaware "that PTV would not be eligible to receive part of their budget allocation," their responses presumably were based on their past payments at all rates into the Combined Royalty Funds. Thus, the Panel explicitly departed from prior rejections of the Evidentiary Adjustment and held that "PTV's Bortz share should be adjusted upward to account for PTV's non-participation in the 3.75% or Syndex Funds."[51]

The 1998-99 Panel's conclusion has since been confirmed on two[52] separate occasions. First, on review, the Librarian found no issue with the 1998-99 Panel's method for calculating PTV's award and observed that, even after the Panel applied the Evidentiary Adjustment to PTV's award, "PTV did not receive a percentage of the 3.75% Fund or the Syndex Fund." [53] Second, the 2004-05 Judges held that the Evidentiary Adjustment, as applied by the 1998-99 Panel, was "appropriate" and applied it again to calculate PTV's share of the Basic Fund.[54]

Here, the parties have not provided a "reasoned explanation"—nor any factual or legal basis—to depart from the precedent set by the 1998-99 Panel and the 2004-05 Judges.[55] To the contrary, JSC and CTV have reaffirmed this precedent.[56] Indeed, as the Judges observed in their June 29, 2018 Order, the only argument raised in objection to the continued application of the Evidentiary Adjustment was Program Suppliers' eleventh-hour citation to the 1983 CRT's

[51] *1998-99 Determination* at 26 n.10.

[52] The issue was not raised in the D.C. Circuit's review of the 1998-99 Determination nor in the 2000-03 Determination. *See generally 1998-99 Librarian Order*, 69 Fed. Reg. at 3609, 3609 n.15 (issue not raised); *2000-03 Determination*, 75 Fed. Reg. at 26799-800 (PTV share based on settlement agreement).

[53] *See 1998-99 Librarian Order*, 69 Fed. Reg. at 3609, 3609 n.15.

[54] *2004-05 Determination*, 75 Fed. Reg. at 57070; *see also Proposed Findings of Fact and Conclusions of Law of the Settling Parties, Docket No. 2007-3 CRB CD 2004-2005* at 130 ¶ 317 (March 24, 2010).

[55] *See* 17 U.S.C. § 803(a)(1); *1998-99 Librarian Order*, 69 Fed. Reg. at 3514.

[56] *See, e.g.*, JSC RPFF ¶ 34(c); CTV RPFF ¶ 32(e).

original exclusion of PTV from the 3.75% Fund. The 1998-99 CARP, however, was plainly aware of the 1983 CRT's ruling, making explicit reference to that ruling as a basis for concluding that the Evidentiary Adjustment would not necessarily apply to *any* methodology, such as a methodology that specifically estimates shares of each of the Basic, 3.75%, and Syndex Funds. Rather than justify a departure from precedent, the 1983 CRT and the 1998-99 CARP determinations demonstrate that the Evidentiary Adjustment is warranted where the methodologies used to calculate relative marketplace value are based on the Combined Royalty Funds rather than tailored to the Basic, 3.75%, and Syndex Funds.

B. The Record Supports the Application of the Evidentiary Adjustment.

As established by uncontroverted expert testimony, and as further clarified by Ms. McLaughlin in her Affidavit, the Evidentiary Adjustment is necessary for each type of global evidentiary study presented in this proceeding.

1. Testimony of Linda McLaughlin

Ms. McLaughlin first explained in her written testimony with Dr. Blackburn that the Evidentiary Adjustment is needed "in order for PTV to receive the share of *total* value to CSOs estimated by the other experts."[57] Ms. McLaughlin expressly applied[58] the Evidentiary Adjustment to the results of her Augmented Bortz Survey analysis, the Horowitz survey, the Crawford regression, and the Israel regression because each of these studies estimated relative marketplace value based on *total* royalties.[59]

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[57] Ex. 3012 at 24-25 (McLaughlin & Blackburn) (emphasis added); *see also* McLaughlin Affidavit, at 1.

[58] Ex. 1101 (McLaughlin & Blackburn) shows an example of how Ms. McLaughlin applied the Evidentiary Adjustment.

[59] *See* Ex. 3012 at 24-25 (McLaughlin & Blackburn); *see also* McLaughlin Affidavit at 1.

At the hearing, Ms. McLaughlin reiterated that, while PTV recovers only from the Basic Fund, "all of these studies look at, as a percent of all royalties from all funds, how they would divide the relative value," so it is necessary to adjust PTV's share of the Basic Fund using the method employed by the 2004-05 Judges.[60] No party presented contrary written or oral testimony in this proceeding.[61]

2. Econometric Evidence

The Crawford and Israel regressions measured value based on the Combined Royalty Funds. As described in Ms. McLaughlin's written testimony, the Evidentiary Adjustment must be applied to the Crawford and Israel regressions because both estimate value to CSOs based on "shares of the Combined Royalty Funds."[62] The testimony of Drs. Crawford and Israel confirms that both of their regressions ultimately measure shares of *total* royalties by multiplying the marginal values of an additional minute of each category of programming (in terms of *total* royalty dollars per minute) by the *total* number of compensable minutes.[63]

Indeed, the prior testimony of Drs. Waldfogel and Rosston—who submitted regression analyses comparable to, albeit less robust than, those of Drs. Crawford and Israel[64]—expressly confirms that the Evidentiary Adjustment should be applied to regression analyses. In the 1998-99 proceeding, Dr. Rosston agreed that the Evidentiary Adjustment should be applied to PTV's

[60] Tr. at 2477:2-2478:4 (McLaughlin).

[61] *See* Section 2.C., *supra*.

[62] Ex. 3012 at 24-25 (McLaughlin & Blackburn); McLaughlin Affidavit at 4-5; *see also* Exs. 2004 at 4-5, 35-36, 40, 43-45 (Crawford); 1003 at 20, Tbl. V-2, Appx. B at B-2, Tbl. B I-1, B-10 (Israel).

[63] *See* McLaughlin Affidavit at 4; Exs. 2004 at 15, 28, 90-93 (Crawford); 1003 at 19 (Israel).

[64] *See* Ex. 2004 at 22-23 (Crawford); Ex. 1003 at 19-20 (Israel).

estimated share under the Rosston regression.[65] Offering an example of two hypothetical funds, Dr. Rosston explained that "if each fund were worth $50 million and Public Television's share is 7.54 percent in my estimate of the $100 million, it would be 15 percent of … the basic pool[.]"[66] Dr. Rosston later added that, "it makes a lot of sense that you would do this math and increase the share of Public Television in this Fund and decrease the shares of everybody else in this Fund."[67]

In the 2004-05 proceeding, Dr. Waldfogel similarly agreed that the Evidentiary Adjustment was necessary because his regression analysis applied to "all funds together, because what's in the independent variable is what's going into all the funds together."[68] In fact, Dr. Waldfogel responded to prior criticisms that the Evidentiary Adjustment might overcompensate PTV, explaining that the Evidentiary Adjustment made sense both methodologically and practically.[69] Methodologically, "the inclusion of 3.75% royalties should not contaminate the public [television] coefficient" because "those minutes appear as part of other program category variables and help to make the coefficients on those minutes appropriately higher than they might otherwise be."[70] Practically, Dr. Waldfogel was able to confirm through the use of a 3.75% dummy variable that the parties' coefficients are "not determined by the difference between royalty payments in the 3.75% and no-3.75% groups" and that, when the 3.75% variable

[65] Ex. 1046 at 71 (Rosston).
[66] *Id.*
[67] *Id.* at 72.
[68] Ex. 1052 at 69 (Waldfogel).
[69] *See* Ex. 4005 at Ex. CCG-5-B at 42 (George) (designating prior Waldfogel testimony).
[70] *Id.*

is eliminated, "PTV's share changes little relative to the baseline specification, and the other shares are also similar."[71]

3. Survey Evidence

The Bortz, Augmented Bortz, and Horowitz surveys measured value based on the Combined Royalty Funds. As Ms. McLaughlin explained in her written testimony, the Bortz survey results must be adjusted because respondent CSOs estimated relative value without being asked to differentiate between programming paid for at the Basic, 3.75%, and Syndex Rates.[72] CSOs' estimates of relative value are then multiplied by the *total* royalties paid by those CSOs.[73] As a result, and as testified to by Ms. McLaughlin and Dr. Blackburn, the Bortz share estimates for each programming category explicitly apply to the Combined Royalty Funds rather than the constituent funds.[74] Indeed, the Evidentiary Adjustment's application to the results of the Bortz survey should be uncontroversial in light of the 1998-99 and 2004-05 determinations, as well as Mr. Trautman's explicit adoption of "the same approach" in this proceeding.[75]

Ms. McLaughlin also testified that the Evidentiary Adjustment would apply to her Augmented Bortz analysis and to the Horowitz survey as well.[76] This is because both methodologies used a similar approach to the Bortz survey, except that the former added back in responses from CSOs who were excluded from the Bortz survey because they imported only

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[71] *Id.*

[72] *See* Ex. 3012 at 24-25 (McLaughlin & Blackburn); *see also* McLaughlin Affidavit at 3.

[73] McLaughlin Affidavit at 3.

[74] *Id.*; Ex. 3012 at 24-25 (McLaughlin & Blackburn).

[75] *See, e.g.*, *2004-05 Determination*, 75 Fed. Reg. at 57070; *1998-99 Determination*, 26 n. 10; Ex. 1002 at 38-39, Tbl 10., Appx. A at A-2 (Trautman); JSC RPFF 34; CTV RPFF 32(e).

[76] *See* Ex. 3012 at 24-25; Tr. 2476:21-2478:4 (McLaughlin).

PTV or Canadian signals and the latter never excluded such responses in the first place.[77] Thus, these methodologies, too, were based explicitly on the Combined Royalty Funds.[78]

4. Viewing Evidence

The Gray viewing study measured value based on the Combined Royalty Funds. Although Ms. McLaughlin and Dr. Blackburn did not directly convert the shares estimated by Dr. Gray's viewing study into shares of the Basic Fund, if the Judges were to adopt Dr. Gray's study, the Evidentiary Adjustment would need to be applied to those shares.[79] Dr. Gray intended his study to measure the audience share of *total* compensable programming time for each of the programming categories, without differentiating programming time based on the Basic, 3.75%, and Syndex Rates.[80] As a result, Dr. Gray's study, like the other global studies in the record, estimates a "share of the *total* 2010-2013 Cable Royalties" based on the Combined Royalty Funds.[81] Indeed, Program Suppliers themselves relied on Dr. Gray's focus on *total* royalties in requesting a "*total* royalty allocation for Program Suppliers."[82]

Accordingly, because each of the foregoing types of evidence measured value based on the Combined Royalty Funds, the Evidentiary Adjustment must be applied to their share estimates to determine parties' shares of the Basic and 3.75% Funds.

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[77] McLaughlin Affidavit at 3-4.

[78] *Id.*

[79] *See id.* at 5 n.18.

[80] *See* Ex. 6036 at 11, 15-20 (Gray).

[81] *See id.* at 8-10, 15-20, Tbls. 1-2 (emphasis added).

[82] *See* PS PFF ¶ 355.

C. Calculation of the Evidentiary Adjustment

Ms. McLaughlin and Dr. Blackburn detail the method for calculating the Evidentiary Adjustment both in the record and in the McLaughlin Affidavit submitted with this brief.[83] As part of her efforts to clarify the calculation as requested by the Judges, Ms. McLaughlin has included in her Affidavit sample calculations, a more detailed technical appendix, and a spreadsheet tool that can be used by the Judges to implement the calculations, all rooted in the record in these proceedings.[84]

V. Conclusion

For the foregoing reasons, the Judges should apply the Evidentiary Adjustment when their chosen methodology allocates shares based on the Combined Royalty Funds. Such an adjustment is necessary to ensure that the parties are awarded their relative marketplace values as actually measured by the methodology that the Judges choose to adopt. In that regard, PTV continues to urge the Judges to apply the results of Dr. Crawford's initial regression analysis, as modified by the Evidentiary Adjustment.[85] PTV does not believe that additional evidence or testimony is needed for the Judges to resolve the issue presented in the Judges' June 29, 2018 Order.

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[83] *See* Exs. 3012 at 24-25 (McLaughlin & Blackburn); 1101 (McLaughlin & Blackburn); McLaughlin Affidavit at 7-10.

[84] *See* McLaughlin Affidavit at 7-10, Appxs. 1-2.

[85] *See* PTV PCL 30-32.

July 16, 2018

Respectfully submitted,

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Before the
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In re **DISTRIBUTION OF CABLE ROYALTY FUNDS**	**CONSOLIDATED PROCEEDING NO. 14-CRB-0010-CD (2010–13)**

AFFIDAVIT OF LINDA MCLAUGHLIN CLARIFYING EVIDENCE IN THE RECORD IN ACCORDANCE WITH THE JUDGES' JUNE 29, 2018 ORDER

July 16, 2018

In our April 17, 2017 Written Direct Testimony, David Blackburn and I converted the Public Television (PTV) shares of total royalties reported by other experts into PTV's shares of the Basic Fund.[1] We provided two interrelated reasons for this conversion: First, the surveys and econometric estimates of value to Cable System Operators ("CSOs") determine the shares of *total* royalties (the "Combined Royalty Funds") for each of the programming claimants. Second, while the Combined Royalty Funds consist of three royalty categories—Basic, 3.75 and Syndex—PTV is eligible for an award from only the Basic Fund. In this Affidavit, I clarify our reasoning and the associated calculations.[2]

1. Combined Royalty Funds

The compulsory license requires payments of particular royalty percentages of the CSOs' receipts for the tier that includes the distant signals from the subscriber groups that receive them. In general, the receipts are the monthly rate for that tier multiplied by the number of subscribers, and multiplied by six months to reflect the semiannual payment period. For large cable systems, which account for the vast majority of the royalties paid,[3] the royalty percentages vary based on the number and type of imported signals. Depending on the characteristics of the cable operator and the retransmitted station, some stations were permitted to be retransmitted by certain cable operators under rules prevailing prior to mid-1981, while others were not. Since that time, both categories can be retransmitted under the compulsory license but at different royalty percentages.

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[1] *See* Ex. 3012 at 24-25 (McLaughlin & Blackburn). These calculations were done for the Augmented Bortz and Horowitz surveys, and the Israel and Crawford econometric studies. *See id.*

[2] This affidavit, like our Written Direct Testimony, applies to programming categories excluding music. *See id.* at 3, 24 n.41, 25-26.

[3] *See id.* at 9 n.15. As we noted in our Written Direct Testimony, Form 3 systems accounted for 99 percent of the royalties paid in 2010-13. *Id.*

A basic fee of approximately one percent or less is charged for the formerly permitted signals, while a 3.75 fee, equal to 3.75 percent, is charged for the formerly not permitted signals. There is a small third category, which generates a Syndex fee and which also arises from changes to the pre-1981 rules concerning particular programs that were once required to be blacked out.[4] A minimum fee equal to a basic fee for one distant signal equivalent ("DSE") is required even if no signal or only a fractional DSE is imported. The minimum fee and the additional basic fees charged for the formerly permitted stations comprise the Basic Fund. All programming categories share in this fund. The 3.75 Fund applies to all programming categories except PTV (because PTV stations were always permitted under the pre-1981 rules, but at least some stations with programming in the other categories were not). The Syndex Fund applies only to certain programming in the Program Supplier category that was required to be blacked out pre-1981. The sum of all the royalties from these three funds is the Combined Royalty Funds, that is, the total royalties paid. In 2010-13, the Basic Fund accounted for 86 percent of the Combined Royalty Funds, the 3.75 Fund accounted for 14 percent and the Syndex Fund for less than 0.01 percent.[5]

2. Shares of the Combined Royalty Funds

a. Bortz, Augmented Bortz and Horowitz Surveys

The annual Bortz survey asks eligible CSOs how they would allocate a fixed budget among the different programming categories on the distant signals they actually carried during

[4] *Distribution of the 2000-2003 Cable Royalty Funds, Docket No. 2008-2 CRB CD 2000-2003,* 75 Fed. Reg. 26798, 26798-99 (May 12, 2010).

[5] The Syndex Fund averaged less than $10,000 semiannually during this period out of an average of more than $100 million in Combined Royalty Funds. *See* Ex. 4009 at 5 (Martin).

the preceding year.[6] The CSOs are not asked separately about programming included in 3.75 signals or programming subject to Syndex fees; rather such programming, like programming included in Basic signals, is simply part of the different programming categories. Each CSO gives the percent of this hypothetical budget it would allocate to each programming category and the survey takers make sure that the replies given by each CSO sum to 100 percent.[7] Bortz then multiplies the replies of each responding CSO by the total royalties paid by that CSO during the previous six months and sums the results (now in royalties-paid amounts) over all CSOs.[8] As a result, and as we testified, the shares Bortz gets for each programming category explicitly apply to the Combined Royalty Funds, not the Basic Fund.[9]

The Augmented Bortz survey follows the same weighting steps but includes CSOs excluded as ineligible in the original Bortz survey because they imported only PTV and/or Canadian signals. Thus, the Augmented Bortz survey, which corrects for this omission, also explicitly applies to shares of the Combined Royalty Funds.[10]

The Horowitz survey took a similar approach, except that it did not exclude the CSOs that imported only PTV and/or Canadian stations. That is, it asked CSOs to allocate a fixed budget among all categories of programming without regard to whether the imported station required a 3.75 royalty or the programming required a Syndex royalty, and it weighted the

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[6] *See* Ex. 1001 at 1 (Trautman).

[7] *See id.* at Appx. B at B-5, B-10, B-15, B-20.

[8] The CSOs are categorized into four royalty-size-based strata which are combined based on the percentage of total royalties paid by all eligible sampled and non-sampled CSOs. *Id.* at 11-13.

[9] Ex. 3012 at 24 (McLaughlin & Blackburn).

[10] *Id.* at 24-25.

replies based on the total royalties paid.[11] Thus, the Horowitz survey shares also explicitly apply to the Combined Royalty Funds.[12]

b. Crawford and Israel Econometric Studies

The Crawford and Israel econometric studies (regressions) also yield shares of total royalties, as we testified.[13] These studies attempt to explain the total royalties paid by each CSO (the dependent variable)[14] by the amount of time in each of the programming categories on the imported stations (with no separation of Basic, 3.75 and Syndex minutes)[15] and various control characteristics (together, the independent variables). Their regressions yield the marginal value (in terms of total royalty dollars per minute) of an additional minute of each type of imported programming. These values for each programming category are then multiplied by the total number of compensable minutes for each category and converted to shares of total royalties.[16]

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[11] *See* Exs. 6012 at 6, 12, 16, Appx. A at 36, 40 (Horowitz); 6010 at 4, 6-7 (Frankel).

[12] Ex. 3012 at 24 (McLaughlin & Blackburn).

[13] *Id.* at 24.

[14] Dr. Israel describes the dependent variable used as the "total royalty fee paid by the CSO." Ex. 1003 at Appx. B at ¶ 18 (Israel). Dr. Crawford explains, "the dependent variable is the natural log of the royalty paid by a given system for a given subscriber group in a given accounting period." Ex. 2004 at ¶ 76 (Crawford).

[15] Dr. Crawford states, "The first group of variables included in the regression analysis is the total minutes of each programming type carried on the distant signals carried in that subscriber group." *Id.* at ¶ 116. Dr. Israel also includes total minutes, but he also "scales the minutes on each distant signal (and thus the minutes of each type of programming) to account for the percentage of viewers who actually receive the signal." Ex. 1003 at ¶ 27 (Israel).

[16] Dr. Crawford states, "I use these estimates [of the marginal value of different types of programming content] to calculate the share of the total royalties that should accrue to each of the claimants' categories (the 'share calculations')". Ex. 2004 at ¶¶ 91-92 (Crawford). Dr. Israel says, "To determine the total value of the different categories of programming for each CSO - Accounting Period, I multiply the corresponding regression coefficient (which gives the average value of an additional minute of that type of programming) by the actual number of compensable minutes aired." Ex. 1003 at ¶ 38. Dr. Israel uses total DSE weighted compensable minutes to correspond to the DSE weighting in his regression. *Id.* at ¶ 38, Tbl. V-2).

Thus, the programming category shares derived from these econometric studies apply to the Combined Royalty Funds.[17]

3. Conversion of Shares of the Combined Royalty Funds to Shares of the Basic Fund

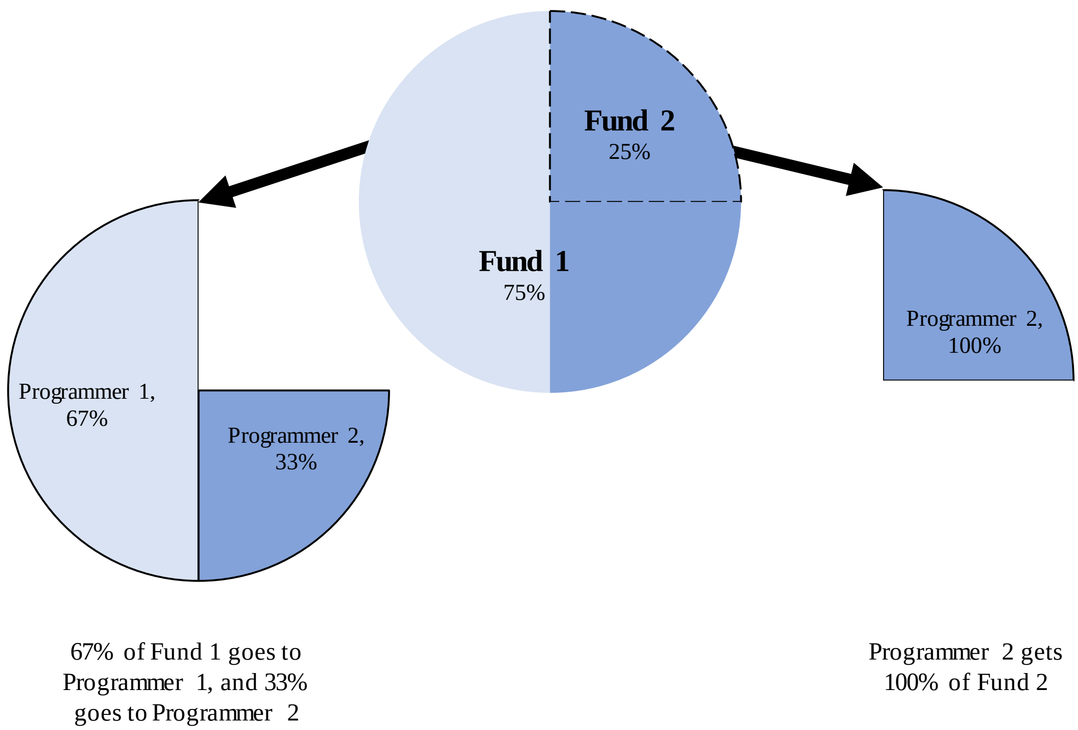
Because the surveys and econometric studies discussed above produce shares of *total* royalties,[18] they must be converted so that the total disbursed to each programming category from each of the three individual funds will equal its estimated share of the Combined Royalty Funds. Suppose for simplicity there were only two funds, one 75 percent of the total and the other 25 percent of the total, and two categories of programming, each estimated to be valued at 50 percent of the total by CSOs. Further suppose that one of these categories was eligible to be paid from only the larger (75 percent) fund, while the other was eligible for both funds. The single-fund programming category should be paid 67 percent of the larger fund (its 50 percent share divided by 75 percent, the size of its only eligible fund). The double-fund programming category should be paid the remaining 33 percent of the larger fund and all of the smaller fund. As illustrated in Figure 1, this conversion allows the single-fund category to get 50 percent of the total value estimated by CSOs (67% x 75% = 50%) and the double-fund category to get 50

[17] Drs. Crawford and Israel explain that their studies follow the same general method of earlier studies by Drs. Waldfogel and Rosston. *See* Exs. 2004 at ¶¶ 71-72 (Crawford); 1003 at ¶¶ 37, 39 (Israel). Drs. Waldfogel and Rosston each explained in earlier allocation hearing testimony that their calculations apply to the Combined Royalty Funds, and Dr. Rosston confirmed that an adjustment should be applied to his calculations to determine PTV's share of the Basic Fund, *see* Exs. 4018 at 877:7-21 (Waldfogel); Ex. 1046 at 2860:2-2861:13 (Rosston).

[18] Although we did not calculate the Basic Fund share based on Gray's viewing study in our Written Direct Testimony, we did use these data in our changed circumstances analyses. *See* Ex. 3012 at 20-22 (McLaughlin & Blackburn). Gray's study aims to estimate the audience share of total compensable programming time for each of the programming categories, with no separation of programming paid at the base rate, the 3.75 rate, and the Syndex fee. *See* Ex. 6036 at 8-10, 15-19, Tbls. 1-2. As a result, viewing shares also are directed to the allocation of the Combined Royalty Funds.

percent of the total value as estimated by CSOs as well ([33% x 75% = 25%] + [25% x 100% = 25%], or 50% in total).

Figure 1: Example of Appropriate Adjustment



If no conversion were made, the double-fund category would get more than 50 percent of the total value estimated by CSOs ([50% x 75% = 37.5%] + [100% x 25% = 25%], or 62.5% in total) and the single-fund category would get only 37.5 percent of the total (50% x 75% = 37.5%).

4. Conversion Calculation Method

In our April 17, 2017 Written Direct Testimony, we provided 2010-13 Basic Fund share calculations for PTV and each other programming category based on the Augmented Bortz survey, the Horowitz survey, Dr. Crawford's preferred regression and Dr. Israel's regression.[19]

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[19] *See, e.g.*, Exs. 3012 at 25, Tbl. 3 (McLaughlin & Blackburn); 1101 (McLaughlin & Blackburn).

In those calculations, we adjusted sequentially for nonparticipation in Syndex and 3.75 royalties.[20] The same conversion method can be used (i) for other methodologies yielding shares of total royalties and/or (ii) with updated royalty funds data. Appendix 1 shows these calculations in algebraic form. Appendix 2 is an Excel template that contains the formulas we used to convert shares of total royalties to shares of Basic Fund royalties.[21] When shares of total royalties and the amounts in each royalty fund are inserted into Appendix 2, shares of the Basic Fund will be computed.[22]

For ease of explanation, we simplify the conversion process here, focusing on the Basic and 3.75 Funds and assigning 100 percent of the relatively small Syndex Fund to Program Suppliers.

Table 1 shows an example for the year 2010 using the Crawford initial regression.[23] Each of the calculation steps are described following the table.

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[20] I used the same method in my 2009 Testimony. *See* Ex. 3007 at 11-12 (McLaughlin). The Judges relied on my testimony regarding the conversion of survey shares of total royalties to shares of the Basic Fund in reaching their determinations. *See Distribution of the 2004 and 2005 Cable Royalty Funds, Docket No. 2007-3 CRB CD 2004-2005*, 75 Fed. Reg. 57063, 57070 (September 17, 2010).

[21] These are the same formulas used to create Ex. 3012 at 25, Tbl. 3 (McLaughlin & Blackburn) and embedded in the backup Excel file, Ex. 1101 (McLaughlin & Blackburn).

[22] For convenience, Appendix 2 also calculates shares of the 3.75 Fund, in accordance with the method described in Appendix 1.

[23] The table is derived from CDC data (Col. (a), Rows, (1), (2), (4), and (6), and Dr. Crawford's Figure 17). *See* Ex. 2004 at 41 (Crawford).

Table 1

Calculation Example: Crawford Initial Regression (2010)

			2010-1 Royalties (a)	As % of Basic + 3.75 (b)	As % Combined Funds (c)
(1)	Minimum Fee		13,164,087		
(2)	Base Rate		72,802,744		
(3)	Basic Fund	(1)+(2)	85,966,832	87.1%	87.09%
(4)	3.75 Fund		12,732,765	12.9%	12.90%
(5)	Basic Fund + 3.75 Fund	(3)+(4)	98,699,597	100.0%	99.99%
(6)	Syndex Fund		9,638		0.01%
(7)	Combined Funds	(5)+(6)	98,709,235		100.0%

	Programming Category		Share of Total Royalties (a)	PTV Basic-Fund only (a:11) / (b:3) (b)	Other Basic Fund (a) x [(b:15) / (a:15)] (c)	Share of Basic Fund (b) or (c) (d)	Share of 3.75 Fund (a) / (a:15) (e)
(8)	Sports		34.3%		33.4%	33.4%	40.6%
(9)	Commercial TV		17.5%		17.0%	17.0%	20.7%
(10)	Program Suppliers		27.7%		26.9%	26.9%	32.7%
(11)	PTV		15.4%	17.7%		17.7%	
(12)	Devotional		1.0%		1.0%	1.0%	1.2%
(13)	Canadian		4.1%		4.0%	4.0%	4.8%
(14)	Sum	Sum (8)-(13)	100.0%			100.0%	100.0%
(15)	100% less PTV share	100%-(11)	84.6%	82.3%			

Step 1. Calculate the size of each fund: Basic Fund (minimum fee portion plus royalty base rate fees), 3.75 Fund, and Syndex Fund. *See* Col. (a), Rows (1)-(7). In this simplified explanation, 100 percent of the Syndex Fund would be assigned to Program Suppliers, and its contribution to total royalties would be further ignored as rounding error.[24]

[24] As shown in Col. (c), Row (5), the Basic and 3.75 Funds amount to 99.99 percent of the Combined Royalty Funds in 2010-1. Based on CDC data, the same 99.99 percent applies to the entire 2010-13 period. *See* Ex. 4009 at 5 (Martin).

Step 2. Calculate the relative size of the Basic Fund compared to the Basic and 3.75 Funds (*i.e.*, a nonparticipation factor) by dividing the royalties in the Basic Fund by the sum of the royalties in the Basic and 3.75 Funds. In the example, this factor is 87.1 percent, as shown in Col. (b), Row (3) of Table 1.

Step 3. Derive PTV's share of the Basic Fund, equal to PTV's total royalty share divided by this nonparticipation factor. Since PTV's share of the total royalties is 15.4 percent in the example at Col. (a), Row (11), PTV's share of the Basic Fund is 17.7 percent in Col. (b), Row (11). (15.4% / 87.1% = 17.7%.).

Step 4. Calculate a ratio to derive the other programming categories' shares of the Basic Fund. This ratio equals 100 percent less PTV's share of the Basic Fund, divided by 100 percent less PTV's share of total royalties. In the example, the ratio is 82.3 percent (100 % - 17.7%) divided by 84.6 percent (100% - 15.4%), as shown in Cols. (b) and (a), respectively, Row 15. This division yields a ratio of 82.3 / 84.6 (or approximately 0.97).

Step 5. Multiply the total royalty share for each other programming category by this ratio to obtain the other category's Basic Fund share. In the example, using the Sports category as an illustration, Sports' total royalty share of 34.3 percent is multiplied by the 82.3 / 84.6 ratio to derive its 33.4 percent share of the Basic Fund. *See* Cols. (a) and (c), Row 8.

Step 6. Derive 3.75 Fund shares. PTV's share of the 3.75 Fund is zero; each other programming category's share equals its total royalty share divided by 100 percent less PTV's total royalty share (*i.e.*, divided by 100 % - 15.4% = 84.6%). For example, Sports total royalty share of 34.3 percent is divided by 84.6 percent to derive its 40.6 percent share of the 3.75 Fund. *See* Cols. (a) and (e), Row 8.[25]

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[25] If you multiply a programming category's resulting share of the Basic Fund by the relative size of the Basic Fund (as calculated in *Step 2*) and its resulting share of the 3.75 Fund (as calculated

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of July, 2018 Linda McLaughlin

in *Step 6*) by the relative size of that fund (12.9 percent in Table 1), one can see that, in total, the category receives its share of total royalties. For example, PTV receives 17.7 percent of the Basic Fund or 15.4 percent of total royalties (17.7% x 87.1% = 15.4%). Sports receives 33.4 percent of the Basic Fund plus 40.6 percent of the 3.75 Fund or 34.3 percent of total royalties ([33.4% x 87.1%] + [40.6% x 12.9%] = 34.3%). Thus, using this method, each programming category ends up with the estimated share of *total* royalties given by the Crawford initial regression.

Appendix 1

<u>Technical Appendix</u>

The formulas for the simplified calculations can be expressed as follows. If you let P = PTV's share of the *total* royalties, B = Basic Fund portion of the total of the Basic Fund and 3.75 Fund, and O = share of the *total* royalties for any other non-PTV recipient, these calculations can be written as:

- PTV's share of the Basic Fund = P / B
- Other Recipient's share of the Basic Fund = O * (100% - P / B) / (100% - P)
- Other Recipient's share of the 3.75 Fund = O / (100% - P)

In this case, PTV receives a total share equal to P / B * B = P, and all other recipients receive [O * (100% - P / B) / (100% - P) * B] + [O / (100% - P) * (100% - B)] = O.

The formulas for the full calculations, including the effect of the Syndex Fund, can be expressed as follows. For everyone who does not partake of the Syndex Fund (*i.e.*, everyone in this proceeding other than Program Suppliers), we calculate their non-Syndex shares as (Group Overall Share of Total Royalties) / (Total $ in Basic Fund + Total $ in 3.75 Fund) * (Total $ in All Funds). For the Program Suppliers, the Syndex Share is 100 percent, and the non-Syndex share is equal to (1 - Sum of Non-Syndex Shares of All Other Groups).

Then, the calculation for the shares of the Basic and 3.75 Funds can proceed as described above, but instead of using the shares of overall royalties, instead use the share of non-Syndex funds as just calculated. Thus, if you let ***P*** = PTV's share of the *non-Syndex* royalty, ***B*** = Basic Fund portion of the total of the Basic Fund and 3.75 Fund, and ***O*** = share of the *non-Syndex* royalty for any other non-PTV recipient, these calculations can be written as:

- PTV's share of the Basic Fund = ***P*** / ***B***
- Other Recipient's share of the Basic Fund = ***O*** * (100% - ***P*** / ***B***) / (100% - ***P***)
- Other Recipient's share of the 3.75 Fund = ***O*** / (100% - ***P***)

Proof of Delivery

I hereby certify that on Monday, July 16, 2018 I provided a true and correct copy of the PTV Brief and Supporting Affidavit Addressing Basic Fund Adjustment to the following:

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MPAA-represented Program Suppliers, represented by Lucy H Plovnick served via Electronic Service at lhp@msk.com

Signed: /s/ Ronald G. Dove Jr.